

**REMARKS**

The Office Action dated May 14, 2008, has been received and carefully considered. Reconsideration of the current rejections in the present application is also respectfully requested based on the following remarks. New claims 58 and 59 have been added. Entry of the addition of new claims 58 and 59 is respectfully requested.

I. **THE INDEFINITENESS REJECTION OF CLAIMS 30-52**

On page 4 of the Office Action, claims 30-52 were rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the invention. In particular, the Examiner alleges that it is unclear how a balance would be stored in the adjustment account if the periodic retirement income payment is less than the guaranteed minimum payment. This rejection is hereby respectfully traversed.

Applicant again refers the Examiner to the specification which describes the storing of balances in an adjustment account:

Variable immediate annuity 515 will return or pay out a benefit based on the investments comprising the account. At step 520, the benefit level actually realized by annuity 515 is compared to the guaranteed minimum periodic retirement income payment that, in one embodiment, is predetermined by the user. In another embodiment, the guaranteed minimum periodic retirement income payment is based on the total premium payments made during the accumulation period. **If the benefit level received is less than the guaranteed minimum periodic retirement income payment, then the adjustment account balance is increased by an amount equal to the difference between the benefit level and the guaranteed minimum periodic retirement income payment.** For instance, assume that the actual benefit realized by the annuity account is \$5,000 and that the guaranteed minimum periodic retirement income payment was predetermined by the user to be \$6,000. In this scenario the adjustment account 530 will show a balance of \$1,000, the additional payment required to provide the user with the guaranteed minimum periodic retirement income payment. According to one embodiment, the comparison of the benefit level with the guaranteed minimum periodic retirement income payment may be made by an adjustment module, which may be associated with the annuity 515.

Returning to step 520, if the benefit level realized by the variable immediate annuity 515 is greater than the guaranteed minimum periodic retirement income payment, then at step 535 it is determined whether the adjustment account 530 shows a past balance. If it does, then a determination is made at step 540 as to whether the difference between the benefit level and the adjustment account balance is greater than the guaranteed minimum periodic retirement income payment, and, if it is, then the user is paid the difference between benefit level and the adjustment account balance. If, however, the difference between the benefit level and the adjustment account balance is less than the guaranteed minimum periodic retirement income payment, then the adjustment account balance is decreased by an amount equal to the difference between the benefit level and the guaranteed minimum periodic retirement income payment. The user is then paid the guaranteed minimum periodic retirement income payment amount. According to one embodiment, steps 520, 535 and 540 are processed by an adjustment module, which may be associated with annuity 515. In yet another embodiment, should the user pass away during the annuitization period and/or the period certain, any adjustment balance is forgiven as a death benefit 545, as shown.

*See, e.g., Page 27, line 34 - Page 28, line 5 (emphasis added).*

Applicant submits that the "adjustment account" recited in the pending claims would store a balance that indicates the additional payment required to provide the user with the guaranteed minimum periodic retirement income payment. A balance would be stored, for example, if a periodic retirement income payment amount (e.g., a given benefit payment or level) is *less* than the guaranteed minimum periodic retirement income payment amount. Thus, if the user has a guaranteed minimum periodic retirement income payment amount of \$100, for example, but the periodic retirement income payment amount (e.g., benefit level) for a given periodic period of time (e.g., month) is \$95, then the "adjustment account" would store a balance of \$5. The balance in the adjustment account may be drawn down in situations where the periodic retirement income payment amount is *greater* than the guaranteed minimum periodic retirement income payment amount.

Accordingly, Applicant respectfully submits that, as described above, the claimed systems and methods are able to store a balance in an adjustment account when the periodic

retirement income payment amount is less than the guaranteed minimum periodic retirement income payment amount.

In view of the foregoing, it is respectfully requested that the aforementioned indefiniteness rejection of claims 30-52 be withdrawn.

II. THE ANTICIPATION REJECTION OF CLAIMS 30-36 AND 45-57

On page 5 of the Office Action, claims 30-36 and 45-57 were rejected under 35 U.S.C. § 102(e) as being anticipated by Dellinger (U.S. Patent No. 7,089,201). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished). Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id.

Regarding claim 30 and 55, the Examiner asserts that Dellinger discloses the claimed invention. Applicant respectfully disagrees. In particular, Applicant respectfully submits that Dellinger fails to teach, or even suggest, among other things, an "equity module to receive an income generating payment" as recited in each of independent claim 30.

Applicant respectfully submits that Dellinger does not teach or suggest an "equity module to receive an income generating payment." In contrast, Dellinger merely teaches computerized methods for administering variable annuity plans. However, Applicant respectfully submits that Dellinger does not teach or suggest any feature or functionality that even remotely comprises an equity module that receives an income generating payment.<sup>1</sup> The excerpts relied upon by the Examiner as purportedly disclosing this recitation merely describes benefit payments, which are not income generating payments. For example, col.4, lines 30-46 merely discloses benefit payments, not an equity module or an income generating payment. Similarly, Figure 5 merely discloses benefit payments and other annuity particulars but does not disclose an equity module or an income generating payment. Col. 8, lines 35-50 also fails to disclose an equity module or an income generating payment, but merely teaches benefit payments. Lastly, col. 8, line 66 - col. 9, line 5 merely discloses reductions in benefit payments, but does not teach or suggest any feature or functionality comprising an equity module or an income generating payment. For at least this reason, therefore, Applicant respectfully submits that claims 30 and 55 are allowable over Dellinger.

Regarding claims 31-36, 45-54 and 56-57, these claims are dependent upon independent claim 30 or 55. Thus, since independent claims 30 and 55 should be allowable as discussed above, claims 31-36, 45-54 and 56-57 should also be allowable at least by virtue of their dependency on independent claim 30 or 55. Moreover, these claims recite additional features

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<sup>1</sup> As stated in MPEP § 2131, "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987).

which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 30-36 and 45-57 be withdrawn.

III. CONCLUSION

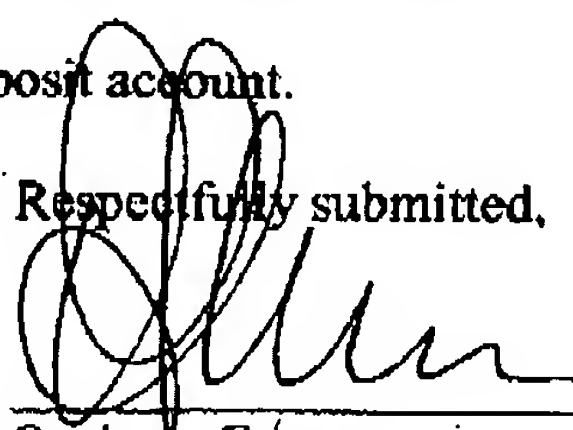
In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees and additional claim fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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